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Supreme Court of the United States

OCTOBER TERM, 1951

No. 331

JULIAN N. FRISBIE, WARDEN, STATE PRISON OF SOUTHERN MICHIGAN, JACKSON, MICHIGAN, PETITIONER,

vs.

SHIRLEY COLLINS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 17, 1951.

CERTIORARI GRANTED NOVEMBER 5, 1951.

SUPREME COURT OF THE UNITED STATES

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[fol. 1] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

DOCKET ENTRIES

1950.

March 14. Petition for writ of habeas corpus filed.
April 6. Order denying petition for writ of habeas corpus filed and entered. Koscinski, J.
April 6. Proof of mailing of copies of order filed.
April 24. Notice of appeal filed.

[fol. 2] [File endorsement omitted]

UNITED STATES OF AMERICA IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

Docket No. 9086

In the Matter of Petition for Writ of Habeas Corpus In Re SHIRLEY COLLINS

PETITION FOR WRIT OF HABEAS CORPUS—Filed March 14, 1950

To the Honorable U. S. District Court:

GREETINGS:

Now, comes Shirley Collins, the above named petitioner, in Proper Person, and petitions this Honorable Court for a writ of habeas corpus.

He respectfully shows unto the Court the following Facts, as the basis for the relief herein asked and prayed for viz:

(Reasons and Grounds.)

1. That your petitioner, Shirley Collins is now illegally imprisoned by one Julian N. Frisbie, Warden of the State Prison of Southern Michigan, located in Blackman Township in Jackson County, State of Michigan.

2. That the cause or pretense of said imprisonment, according to the best knowledge and belief of your petitioner is, by a commitment issued by the Circuit Court for the County of Genesee of Flint, Michigan.

3. That the said imprisonment is illegal and unlawful, and the aforesaid commitment is null and void;

[fol. 3] Question of Law Involved for Judicial Inquiry

1. Because petitioner herein was unlawfully and illegally arrested on February 19, 1942, in the City of Chicago, Illinois, by two Flint, Michigan police officers.

2. Because petitioner herein was forcibly kidnapped and returned to Michigan; denied due process of law, right of counsel, and a hearing in Court.

3. Because there was no requisition made upon the Governor of the State of Illinois for the apprehension of petitioner herein as a fugitive from justice and for his delivery up to the authorities of the State of Michigan.

4. Because the belief of the accused, when leaving the demanding state, that he had not committed any crime against the laws of that state, does not prevent his being a fugitive from justice within the meaning of the provision of U. S. Constitution Art. 4 & 2, and U. S. Rev. Stat. No. 5278 (U. S. Comp. Stat., 1901, P. 3597), relating to extradition proceedings.

5. Because, to be a fugitive from justice within the meaning of the provisions of U. S. Const. Art. 4 and 2, and U. S. Rev. Stat. No. 5278, relating to extradition proceedings, it is only necessary that the accused, having been in the demanding state when the crime was committed, thereafter leave that state and be found within the territory of another.

6. Because the Governor of Illinois did not issue any warrant for the arrest of petitioner herein, and for his delivery up to the police officers of the State of Michigan.

7. Because extradition between the states must be in accordance with the Constitution and laws of the United States, it is founded on Article 4, Section 2 of the Constitu-
[fol. 4] tion of the United States and not on state's comity, courtesy, contract or statutes.

8. Because the return of the petitioner as a fugitive from justice must have been demanded by the executive authorities of the state from whence he has fled.

9. Because on February 20, 1942, petitioner herein, was beaten until unconscious with blackjacks by the Illinois and Michigan officers when he refused to waive extradition to Michigan.

10. Because petitioner herein, having been in confinement since his return to Michigan on February 21, 1942.

11. Because petitioner herein, has been denied due process of law within the meaning of Article 4, section 2 of the Constitution of the United States.

This petition is based upon the files and records of the questions here involved and upon the affidavit of petitioner, all of which is herein submitted.

Respectfully submitted. (S.) Shirley Collins, Petitioner. In Proper Person. Address: 4000 Cooper Street, Jackson, Michigan.

Dated: February 16, 1950.

[fol. 5] IN UNITED STATES DISTRICT COURT

STATEMENT OF FACTS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Your Petitioner herein, Shirley Collins, states to this Honorable Court, that he was living at 3419 South Parkway in the City of Chicago, County of Cook, State of Illinois on the 19th day of February 1942; and that he had resided in this place for ten months prior to the above named date.

That on February 19, 1942, he was arrested in the Wabash bus station in the City of Chicago, Illinois, by two Flint, Michigan police officers.

That he was handcuffed and took by force to the Twelfth Street police station and the Michigan officers ordered him to be held in custody.

That when he refused to answer any questions until he could consult with a lawyer, he was then attacked by the Illinois and Michigan officers and beaten with blackjacks.

That the Michigan officers ordered the Illinois authorities not to let him see a lawyer or anyone else, they said it would do him no good to see a lawyer for they were taking him back to Flint, Michigan immediately.

That on February 20th, 1942, the Michigan officers and the Illinois authorities questioned him again. He was asked if he was ready to go back to Michigan without affording them any additional trouble, and he was asked if he was ready to talk. When he told them he would not make up his mind until he could see a lawyer, he was again attacked by both

the Michigan and Illinois officers with blackjacks, and was beaten until he was unconscious. When he regained consciousness, he was back in a cell.

That on February 21, 1942, he was delivered up to the Flint, Michigan police officers by the authorities of the Twelfth Street police department in Chicago, Illinois, and he was returned to the State of Michigan, City of Flint, and he has been in confinement in a prison in the State of Michi-
[fol. 6] gan since February 21, 1942.

End of Statement of Facts.

Hereon, we proceed by citing the law and cases pertaining to the questions herein involved.

Underhill's "Fourth Edition", page 1463, Sec. 807 (758).

Evidential rules governing interstate extradition—Duty of the Governor—Extradition between the states must be in accordance with the Constitution and laws of the United States. United States, Kentucky v. Dennison, 24 How. (65 U. S.) 66, 16 L. ed. 717. Federal Ex parte Montgomery, 244 fed. 967. It is founded on article 4, section 2 of the Constitution of the United States and not on states comity, courtesy, contract or statutes. Ex parte Morgan, 20 Fed. 298; In re opinion of Justice, 201 Mass. Article 4, section 2 of the Constitution of the United States provides, "that any person charged in any state with treason, felony or other crime, who shall flee from justice and be found subsequently in any other state of the Union, shall, on the demand of the Executive of the state from whence he has fled, be delivered up to be removed to the state having jurisdiction of his crime. Strassheim v. Dailey, 221 U. S. 280, 55 L. ed. 735, 31 Sup. Ct. 558. At a very early period Congress endeavored by statutory enactment to carry into effect the general provisions of this section of the Constitution. W.S.C., tit. 18, Sec. 662. States may also enact laws regulating interstate extradition, Ex parte Ammons, 34 Ohio St. 518. See notes, 68 Am. St. 133; 112 Am. St. 111. provided they are consistent with the federal constitution, Kurtz v. State 22, Fla. 36 I Am. St. 173. even though the state laws require surrender or more exacting terms or cover cases not provided for by the United States. Innes v. Tobin, 240 U. S. 127, 60 L. ed. 562, 36 Sup. Ct. 290 (statute as to persons indictable in another state who have not fled from it). See note, 28

L.R.A. 802. In construing the federal statute, which has been held constitutional, Prigg v. Pennsylvania, 16 Pet. (41 U. S.) 539, 10 L. ed. 1060; Ex parte Morgan, 20 L. ed. 298. the courts have held: first, that the return of the fugitive from Justice must have been demanded by the executive authorities of the state from whence he has fled; People v. Warden of City prison, 83 App. Div. 456, 82 N.W.S. 489; second, it must affirmatively appear by the [fol. 7] evidence that he is charged with the commission of some extraditable, definite and specific offense requisite: Kentucky v. Dennison, 24 How. (65 U. S.) 66, 16 L. ed. 717; Ex parte Slauson, 73 Fed. 666; crime, Federal. Reed v. United States, 224 Fed. 378; which is within the jurisdiction of its courts. United States, Hogan v. O'Neill, 255 U. S. 52, 65 L. ed. 497, 41 Sup. Ct. 222 (governor taking notice of laws of demanding state). Federal, Downey v. Schmidt, 4 Fed. Sup. 1.

A crime as used in article 4, section 2 of the Constitution of the United States includes misdemeanors and every possible crime committed within the borders of the United States. Taylor v. Tainter, 16 Wall. (83 U. S.) 366, 21 L. ed. 287; In re: Brown, 112 Mass. 409, 17 Am. Rep. 114; The word "charged" applies to persons convicted of crime as well as to those who are sought to be tried, Ex parte Bergman, 60 Tax. Cn. 8 130 S.W. 174. As long as the judgment remains unsatisfied, Hughe v. Pflanz, 138 Fed. 980 (record of conviction as evidence). And it applies to one against whom a complaint for a felony is filed before a committing magistrate who can merely hold for trial before another tribunal. Matter of Strauss, 197 U. S. 324, 49 L. ed. 774, 25 Sup. Ct. 555. The fact that the accused is charged with such a crime may be proved by the production of a warrant for his arrest, Federal. Reed v. United States, 224 Fed. 378, or an indictment duly certified and authenticated as provided by statute, supplemented by an affidavit reciting any other facts which are necessary to confer jurisdiction and charging him substantially with a crime against the laws of the state demanding his return. United States, Ex parte Reggel, 114 U. S. 642, 29 L. ed. 250, 5 Sup. Ct. 1148.

Extraordinary Legal Remedies Vol. 1

Page 109, Sec. 89—The requisition—the removal of a person from a state under extradition is summary in its char-

acter, and the provision of the act of Congress must be strictly complied with, People v. Donohue, 84 N. Y. 438, 441; Ex parte Cheatham, 50 Tex. Cn. 51, 58, 95 S.W. 1077. And the proceedings kept within narrow bounds.

Biddinger v. N. Y. Police Comr., 245 U. S. 128, 135, 38 [fol. 8] S. C. 41, 62 L. ed. 193. There must be a demand from the Governor of the state within which the crime has been committed for the surrender of the fugitive who has fled from its jurisdiction. People v. Donohue, 84 N. Y. 438, 441.

The requisition must show that the accused has committed a crime within the jurisdiction of that state and that he is a fugitive from justice. It must be accompanied by a copy of the indictment found or affidavit made before a magistrate charging the offense committed, and duly certified by the Governor. Comm. ex rel Flower v. Supt. of County prison, 220 Pa. 401, 69, Atl. 916 21 L.R.A. N.S. 939.

Such conditions are essential, and their presence or absence in a given case must, of necessity become the subject of judicial investigation when the judgment of the law is invoked. People v. Donohue, 84 N. Y. 438, 441.

In pursuance with the requisition, if it shows on its fact that all the requirements of the Federal Act have been complied with, it is the duty of the Governor of the asylum state to recognize the statements of fact made therein as true, and to issue his warrant and cause the accused to be arrested and delivered to the agent representing the executive of the demanding state. Comm. ex rel Flower v. Supt. of County Prison, 220 Pa. 401, 69 Atl. 916, 21 L.R.A., N.S. 939 Ex Parte Surearingen, 13 S.C. 74. This is especially so because there is no mode of enforcing the performance of this duty. Ex parte Swearingen, 13 S.C. 74.

As petitioner has no constitutional right to a hearing before the Governor, or to submit evidence in his behalf, Munsey v. Claugh, 196 U. S. 364, 25 S.C. 282, 49 L. E. 515; People ex rel Carkran v. Hyatt, 172H, T. 176, 64 N.E. 825, 60 L.R.A. 774, iff. 188 U. S. 691, 47 L. ed. 657, 23 S. C. 456. And as extradition between states can be granted wit-out notice, it is, therefore, immaterial that petitioner is heard by other than the governor. Ex parte Pelinski, 213, S.W. (Mo.) 809. However, accused may contest the validity of the extradition proceedings on habeas corpus. Comm. ex rel Flower v. Supt. of County prison, 220 Pa. 401, 69 Atl.

916, 21 L.R.A., 939. Upon issuance of the writ a return should be made showing a demand or requisition, a copy of [fol. 9] the indictment or affidavit, certified as authenticaby the executive of the demanding state and the warrant of the governor of the asylum state.

When these facts are made to appear by papers regular on their face, there is a weight of authority which holds that the prisoner is prima facie under legal restraint, Barriere v. State, 142 Ala. 72, 78, 39, So. 55. And the court should not on habeas corpus, refuse to recognize the validity of and enforce the warrant unless the accused clearly and satisfactorily shows he is not a fugitive from justice within the meaning of the Federal Constitution and the act of Congress. Comm. ex rel Flower v. Supt. of County Prison, 220 Pa. 491, 69 Atl. 916, 21 L.R.A. N.S. 939. This is especially so as to release on technical grounds. Compton v. Alabama, 214 U. S. 1, 8, 29 S.C. 605, 53 L. ed. 885.

Whether the return does so show these facts is a question of law, and is always open to judicial inquiry. Appleyard v. Mass. 203 U. S. 222; Roberts v. Reilly, 116 U. S. 80.

On the hearing the court may inquire whether the prisoner really falls under the conditions of the Federal Constitution and statute, that is, whether he is subject to extradition. Robb v. Connolly, 111 U. S. 624, 4 S.C. 544, 28 L. ed. 542; State of Tennessee v. Massee, 95 S.C. 315, 79 S.E. 97, 46 L.R.A. N.S. 781.

It may be ascertained whether he is the person charged whether a fugitive, whether the papers show he was in the demanding state at the time the offense was committed, and whether the act charged was a crime against the laws of the demanding state. Seely v. Beardsley, 190 N.W. (10) 498; Comm. ex rel Flower v. Supt. of County Prison, 220 Pa. 401, 69 Atl. 916, 21 L.R.A., N.S. State of Tennessee v. Massee, 95 S.C. 315, 79 S.E. 97, 46 L.R.A., N.S. 781; Ex parte Tod, 12 S.D. 386, 81 N.W. 637, 47 L.R.A. 566.

To authorize surrender, the party held must not only stand charged with crime, but he must be a fugitive from justice. To be a fugitive he must have been corporeally present in the demanding state at the time of the commission of the alleged crime; constructive presence is insufficient. People ex rel Carkran v. Hyatt, 172 N. Y. 176, 64 N.E. 825, 60 L.R.A. 774, Aff. 188 U. S. 691, 47 L. ed. 657, [fol. 10] 23 S.C. 456.

This is a question of fact which the governor of the asylum state must, in the first instance, determine for himself. Hogan v. O'Neill, 255 U. S. 52, 41 S.C. 222; Appleyard v. Mass., 203 U. S. 222, 228, Roberts v. Reilly, 116 U. S. 80; Robb v. Connolly, 111 U. S. 624, 4 S.C. 544, 28 L. ed. 542.

Being a question of fact, it is when contraverted, to be ascertained and determined like any other question of fact. Ex parte Tod, 12 S.D. 386, 81 N.W. 337, 47 L.R.A. 566.

Whether the accused is a fugitive depends upon the construction of the Federal Constitution and laws on extradition, which are not construed narrowly and technically by courts as if they were penal laws, but liberally, to effect their important purpose. Biddinger v. New York Police Comr., 245 U. S. 128, 133.

In accordance with such construction, a person charged by indictment or by affidavit before a magistrate with the commission within a state of a crime covered by its laws, and who after the date of the commission of such crime leaves the state—no matter for what purpose or with what motive, nor under what belief—becomes, from the time of such leaving, and within the meaning of the Constitution and laws of the United States, a fugitive from justice, and if found in another state must be delivered by the governor of such state to the demanding state on the production of such indictment or affidavit, certified as authentic by the governor of the demanding state. Biddinger v. New York Police Comr., 245 U. S. 128, 133; Appleyard v. Massachusetts, 203 U. S. 222, 227.

This is so even though he leaves the demanding state before prosecution is anticipated or begun, or without knowledge on his part that he has violated the law, or having committed a crime in one state, returns to his home in another, Biddinger v. New York Police Comr., 245 U. S. 128; Roberts v. Reilly, 116 U. S. 80; Appleyard v. Massachusetts, 203 U. S. 222; Kingsbury's case 106 Mass. 223.

[fol. 11] And even not for the purpose of escaping. Hogan v. O'Neil, 255 U. S. 52, 41 S.C. 222. Such is the demand of the Supreme law of the land, which may not be disregarded by any state. Biddinger v. New York Police Comr. 245 U. S. 128., 134.

Inclusion

Petitioner, herein request this Honorable Court, that it inquire into the legality of his restraint, and upon due

consideration thereof, petitioner prayes he may be discharged from this restraint.

Respectfully submitted, (S.) Shirley Collins, Petitioner, Acting in Proper Person. Address: 4000 Cooper Street, Jackson, Michigan.

Dated: February 16, A. D. 1950.

[fol. 12] *Duly sworn to by Shirley Collins. Jurat omitted in printing.*

[fol. 13] IN UNITED STATES DISTRICT COURT

PETITION FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM

Now comes Shirley Collins, the above named defendant, in Proper Person, and respectfully petitions this Honorable Court for a writ of habeas corpus ad testificandum, and shows unto the Court his reasons therefore:

(1) That Shirley Collins is the defendant and counsel at a proceedings docketed and scheduled to be heard before this Court;

(2) That Shirley Collins is confined as an inmate in the State Prison of Southern Michigan, Blackman Township, Jackson, Michigan, by Warden Julian N. Frisbie.

(3) That the presence of Shirley Collins, is as his own counsel is imperative since he is to argue, and adduce documentary evidence in said proceedings.

This Petition is based upon the affidavit of petitioner.

(S.) Shirley Collins, Petitioner.

[fol. 14] *Duly sworn to by Shirley Collins. Jurat omitted in printing.*

[fol. 15] IN UNITED STATES DISTRICT COURT

PRAECIPE FOR PETITION—February 16, 1950

To the Clerk of the U. S. District Court, 701 Federal Building, Detroit (26), Michigan:

SIR:

Notice, Please place the attached petition for writ of habeas corpus on the docket and call the same for a hearing

and oral argument, on the 27th day of February, 1950, at ten o'clock in the morning of that day, or as soon thereafter as counsel may be heard.

Yours truly, (S.) Shirley Collins, Petitioner, Acting in Proper Person. Address: 4000 Cooper Street, Jackson, Michigan.

Dated: February 16th, 1950.

[fol. 16] IN UNITED STATES DISTRICT COURT

NOTICE OF FILING OF PETITION FOR WRIT OF HABEAS CORPUS—February 16, 1950

To Mr. Stephen J. Roth, Attorney General, 112 State Capital Building, Lansing 2, Michigan:

SIR:

Please Take Notice, that I have on this 16 day of February, 1950, forwarded to the Clerk of the U. S. District Court, a petition for a writ of habeas corpus, of which the annexed is a true copy, and also a Statement of Facts in support thereof, on which the Court is requested to issue its order to the respondents named herein, copy of which is now served with this notice, along with a copy of a Praecipe for said petition.

Yours truly, (S.) Shirley Collins, Petitioner in Proper Person. Address: 4000 Cooper Street, Jackson, Michigan.

Dated: this 16th day of February A. D., 1950.

[fol. 17] IN UNITED STATES DISTRICT COURT

AFFIDAVIT IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS AND PROOF OF SERVICE

STATE OF MICHIGAN,
County of Jackson, ss:

Shirley Collins, being first duly sworn on oath deposes and says that he has examined the files and records in this cause, and upon such examination believes the foregoing

petition submitted by him to be true. Petitioner says that a true copy of the within named petition and supporting papers, have been properly addressed and placed in the care of Personal Affairs' officer, for mailing via the United States Registered mail, to George M. Read, Clerk of the U. S. District Court, located at 701 Federal Building, Detroit 26, Michigan; and to Stephen J. Roth, Attorney General for the State of Michigan at the State Capital Building, Lansing 2, Michigan, the regular place from which they condnet the business of their offices.

Further petitioner sayeth not.

(S.) Shirley Colllins, Petitioner Acting in Proper Person. Address: 4000 Cooper Street, Jackson, Michigan.

Subscribed and sworn to before me a Notary Public on this 16th day of February A. D. 1950.

(S.) N. Jones, Notary Public in and for Jackson County, Jackson, Michigan. My commission expires: Aug. 28, 1953. (Seal.)

[fol. 18] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS—April 5, 1950

At a session of said court held at the Federal Building, Detroit, Michigan on the 6th day of April 1950

Present: Hon. Arthur A. Koscinski, District Judge

A petition for a writ of habeas corpus was filed by Shirley Collins alleging that his imprisonment at the Michigan State Prison, Jackson, Michigan, since February 21, 1942, is illegal and unlawful and his commitment is null and void because he was forcibly kidnapped and returned to Michigan for trial on a murder charge and that he was therefore deprived of his constitutional rights as provided in Article IV, Sec. 2 of the Constitution of the United States providing for extradition of fugitives.

Petitioner originally filed a petition for a writ of habeas corpus in the Supreme Court of the State of Michigan which was denied on June 22, 1949. He then filed a petition for a writ in this District, on the ground that the complaint in the state court action was defective and that a faulty warrant was issued for his arrest, claiming further that he was kidnapped by Michigan Police authorities in Chicago, Illinois, and brought to Michigan for trial. This petition was also denied.

In his second petition for a writ of habeas corpus filed in this court petitioner singles out the claim that he was illegally brought to the State of Michigan for trial.

The state court which sentenced petitioner to imprisonment after his conviction had jurisdiction of the offense and of the person of the petitioner as defendant, and the sentence was within the power of the court to impose. Habeas Corpus will not lie to discharge a defendant in such case.

The fact that he was brought from another jurisdiction by alleged illegal means, such as kidnapping, or unlawful force, did not deprive the sentencing court of jurisdiction. The [fols. 19-20] presence of defendant in the court which imposed the sentence gave it complete jurisdiction over defendant's person regardless of how presence was procured. (See Robinson v. U. S., 144 F. 2d, 392; affirmed 324 U. S. 282.)

It is therefore ordered that the petition for a writ of habeas corpus be and the same is hereby denied.

(S.) Arthur A. Koscinski, U. S. District Court.

[fol. 21] [File endorsement omitted]

In United States District Court

Notice of Appeal—Filed April 24, 1950

Notice is hereby given that Shirley Collins, Petitioner, above named hereby appeals to the United States Court of Appeals for the Sixth Circuit from the order denying application for Writ of Habeas Corpus entered in this cause on April 6, 1950.

(S.) Shirley Collins, Petitioner, Acting in Proper Person. Address: 4000 Cooper Street, Jackson, Michigan.

Subscribed and sworn to before me a Notary Public on this 21st day of April A. D. 1950. (S.) N. Jones, Notary Public, Jackson County, Michigan. My commission expires Aug. 28, 1951. (Seal.)

[fol. 22] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 23] IN UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

CAUSE SUBMITTED—April 6, 1951

Before Simons, Martin and Miller, Circuit Judges

Permission having been formerly granted by the court this cause is taken under submission without oral argument.

JUDGMENT—Entered May 28, 1951

Appeal from the District Court of the United States for the Eastern District of Michigan

This Cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was submitted without argument.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed and the cause remanded for further proceedings in accordance with the opinion herein.

[fol. 24] [File endorsement omitted]

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 11269

SHIRLEY COLLINS, Appellant,

v.

JULIAN N. FRISBIE, Warden, State Prison of Southern Michigan, Jackson, Michigan, Appellee

Appeal from the United States District Court for the Eastern District of Michigan

OPINION—May 28, 1951

Before Simons, Martin and Miller, Circuit Judges

MARTIN, Circuit Judge:

This is an appeal from denial by the United States District Court of a petition for writ of *habeas corpus*, wherein the petitioner avers that he was illegally arrested and maltreated in Chicago, Illinois, by two Michigan police officers, and forcibly kidnaped by them and returned to Michigan, where he is now illegally imprisoned.

The petitioner charges that he has been denied due process of law, right of counsel, and a hearing in court. He shows that no requisition was made upon the Governor of Illinois for his apprehension therein as a fugitive from justice and for his delivery to the authorities of the state of Michigan. In his statement of facts in support of his petition, he alleges that, prior to his arrest on February 19, 1942, in Chicago, Illinois, he had resided in that city for ten months. He states that he was arrested at a bus station in Chicago, handcuffed, and taken by force to the Twelfth Street Police Station, where the Michigan police ordered him to be held in custody; that when he refused to answer any questions until he could consult a lawyer, he was attacked and beaten with blackjacks by the Illinois and Michigan police officers; that the Michigan officers ordered the Illinois authorities not to let him see a lawyer or anyone else, saying that it would do him no good for they were taking him back to Flint, Michigan.

According to his averments, he was questioned again on the next day by the officers of both states and, when asked [fol. 25] if he was ready to go back to Michigan without causing any additional trouble and if he was ready to talk, he replied that he would not decide until he could consult a lawyer; whereupon he was again attacked with blackjacks by both the Michigan and the Illinois officers and beaten into unconsciousness. He declares that, on the following day, he was delivered to the Michigan police officers by the Chicago Police Department, and was carried to Flint, Michigan. He avers that he has been confined in prison since February 21, 1942.

So far as the record discloses, the petitioner has been given no hearing for determination of the truth or falsity of the allegations of his petition for writ of *habeas corpus*. In an order denying the petition, the district judge asserted that the fact that petitioner had been brought from another jurisdiction "by alleged illegal means, such as kidnaping, or unlawful force, did not deprive the sentencing court of jurisdiction." The court cited *Robinson* v. *United States*, 144 F. (2d) 392 (C. A. 6), affirmed 324 U. S. 282, to the proposition that the presence of the defendant in the court which imposed sentence gave it complete jurisdiction over his person, regardless of how such presence was procured.

On its facts, the *Robinson* case bears no analogy to the case at bar. The statement of this court relied upon by the district court related to an assignment of error that the order of a California district court directing Robinson to be returned to the Kentucky district court was in contravention of the provisions of the Removal Statutes, Title 18, section 591, United States Code. Any defects in the removal proceedings were regarded as immaterial upon the principle stated. *But Robinson had not been kidnaped or forcibly brought into Kentucky.* The California district court had directed that he be returned to the Kentucky district court for trial.

The present case is governed by our later decision in *Brown* v. *Frisbie*, 178 F. (2d) 271 (C. A. 6), decided December 8, 1949, in which two of the judges now sitting participated. The opinion writer in the instant case concurred in the opinion in the *Robinson* case. In *Brown* v. *Frisbie*, the petition for writ of *habeas corpus* alleged that petitioner had been forcibly kidnaped in Georgia and brought to Michi-

gan by a police officer of that state, with the connivance and brutal assistance of four deputy sheriffs in Georgia. As we pointed out, the appellant, Brown, averred that the officers attempted to persuade him to sign a waiver, which he declined to do; whereupon, he was attacked by four deputy sheriffs and the Michigan police officer. He alleged further [fol. 26] that he was threatened with a rope and pistols, was intimidated and beaten; yet he refused to sign the waiver. He said that he was handcuffed, shackled and told that "a n---er had no constitutional rights in Georgia"; was dragged to a scout car from the sheriff's office by four deputy sheriffs and the Michigan officer, hustled to the railroad station and aboard a train for Michigan, the officer of which state was instructed to keep him handcuffed, in shackles, and in his seat until the state line had been crossed, with the assurance of the deputy sheriffs that they would "stall the lawyer" who was preparing to resist the petitioner's extradition. Our mandate was that the case be remanded to the district court for further procedure, including the determination of the factual issues, appropriate findings to be filed by the district judge.

There is no material difference in crucial facts or in principle between *Brown* v. *Frisbie* and the instant case. The same district court pursued the same course in each case. It is argued that our decision in the former case is not in conformity with the opinions of the Supreme Court in *Mahon* v. *Justice*, 127 U. S. 700, and *Ker v. Illinois*, 119 U. S. 436. At first blush, it would seem that we are out of line with those authorities which are, of course, binding upon us; but careful analysis and thoughtful consideration will, in our judgment, demonstrate that we are not.

In *Mahon* v. *Justice*, decided in 1887, the petitioner for *habeas corpus*, who was charged with murder in Kentucky, was violently seized and forcibly abducted to that state from West Virginia while requisition for his return was pending before the Governor of West Virginia. The Supreme Court held that no mode is provided by which a person wrongfully abducted from one state to another by persons acting without warrant or authority of law can be restored to the state from which he was taken, if held upon any process of law for an offense against the state to which he has been carried. The court stated that the only question which was presented for its determination was whether in

the circumstances the petitioner was entitled under the Constitution and laws of the United States to release from detention under the indictment, by reason of his forcible and unlawful abduction. The answer was given in the concluding paragraph of the opinion (127 U. S. 715): "So in this case we say that, whatever effect may be given by the state court to the illegal mode in which the defendant was brought from another State, no right, secured under the Constitution or laws of the United States, was violated by his arrest in Kentucky, and imprisonment there, upon the [fol. 27] indictments found against him for murder in that State." It was asserted that whether Congress might not provide for the compulsory restoration of a person to the state from which he has been wrongfully abducted and whether such provision would not greatly tend to the public peace along the borders of the several states were not matters for consideration of the court at that time. It should be observed that *there was no federal statute against kidnaping in existence at the time Mahon* v. *Justice was decided.*

The court said that the earlier case of *Ker* v. *Illinois, supra,* had direct bearing. There, the prisoner had been kidnaped in Peru by a person lawfully delegated to receive him from the Peruvian authorities. Without presenting any demand upon them, the delegate forcibly placed the prisoner on board a United States vessel, transferred him to another, and brought him to California against his will. Before the prisoner's arrival in that state in forcible custody, the Governor of Illinois had made a requisition upon the Governor of California for the delivery of the prisoner as a fugitive from Illinois justice. He was lawfully extradited from California to Illinois, where he was tried and convicted and his sentence affirmed by the highest court of the latter state. On writ of error, the Supreme Court of the United States affirmed the judgment of the state court. It was said that how far the forcible transfer of the defendant, so as to bring him within the jurisdiction of the state where his offense was committed, may be set up against the right to try him is the province of the state court to decide, presenting no federal question reviewable by the Supreme Court of the United States. *In the instant case, we think a federal question is presented.*

It is true that the Supreme Court has adhered to the doctrine of *Mahon* v. *Justice, supra,* and *Ker* v. *Illinois,*

supra. See *Burton* v. *New York Central and Hudson River Railroad Company*, 245 U. S. 315; *Pettibone* v. *Nichols*, 203 U. S. 192, 217 (with a lone voice, that of Mr. Justice McKenna, crying in the wilderness); *Adams* v. *New York*, 192 U. S. 585, 596; *In re Johnson, Petitioner*, 167 U. S. 120, 126; *Lascelles* v. *Georgia*, 148 U. S. 537, 543, 545; *Cook* v. *Hart*, 146 U. S. 183, 190-192. It should be borne in mind, however, that all these cases were decided before the enactment of a national anti-kidnaping law.

In 1932, the Congress took cognizance of the increasing danger to the domestic tranquility and security of our [fol. 28] people by condemning as a criminal act the transportation in interstate commerce of any person unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and "held for ransom or reward". Act of June 22, 1932, c. 271, 47 Stat. 326. Our national legislature was not satisfied that the original Act was clear enough to assure the validity of federal prosecution in numerous instances where such prosecution would be questionable under the then existing form of the Act. Accordingly, the Anti-Kidnaping Act was forthwith amended in 1934; and more teeth were put into it. After the words "carried away by any means whatsoever and held for ransom or reward" were added the words, "or otherwise." The sole exception was made of the kidnaping of a minor by his or her parent. *No exception of law officers, state or federal, from the scope and coverage of the Act was provided for.* Act of May 18, 1934, c. 301, 48 Stat. 781, 18 U. S. C. 408a.

In *Gooch* v. *United States*, 297 U. S. 124, the Supreme Court rejected the contention that the words "ransom", and "reward" mean only pecuniary benefits and that the rule of *ejusdem generis* restricts the words "or otherwise". The opinion quoted from H. R. 1457, 73d Cong. 2d Sess., May 3, 1934, the statement that federal jurisdiction is extended under the Act "to persons who have been kidnaped and held, not only for reward, *but for any other reason*, except that a kidnaping by a parent of his child is specifically exempted." [Italics supplied.]

In *Chatwin* v. *United States*, 326 U. S. 455, 463, it was held that conviction for alleged violation of the federal anti-kidnaping Act could not be sustained in circumstances wherein a fifteen-year-old girl willingly was taken across

the state line for continuance of a "celestial" marriage relationship with a cultist, inasmuch as it was not established that she had been held for ransom, or reward, *or otherwise;* but the court declared that "comprehensive language was used [in the 1934 Act] to cover every possible variety of kidnaping followed by interstate transportation."

From the interpretation of the federal anti-kidnaping Act in the *Gooch* and *Chatwin* cases, we think it clear that the allegations of the petition in the case at bar charge a federal offense against the state officers who kidnaped and abducted the petitioner from Illinois to Michigan. In such circumstances, if the petitioner establishes the averments of his petition, the writ of *habeas corpus* should eventuate in his discharge. The issue involved here is not, as in the earlier cases before the enactment of the federal anti-kid- [fol. 29] naping statute as amended, a matter of comity between the states. A state may not lawfully try, convict and punish a person brought within its territorial confines by force and violence exercised by its officers in violation of a federal criminal statute. The courts of the United States should uphold the constitutional guarantee of due process of law by all appropriate means within their lawful powers, including issuance in last resort cases of the writ of *habeas corpus.* Certainly, if evidence obtained by wire tapping be such "dirty business" as to be suppressed, and if every safeguard is to be placed against the securing of convicting evidence by unreasonable and unlawful search and seizure, a citizen, regardless of how depraved or vicious he may be, may not be seized, kidnaped and forcibly abducted from one state to another by police officers acting beyond their territorial jurisdiction in violation of a criminal law of the United States enacted to prevent kidnaping. Officers of the law are no less immune from the condemnation of the statute than are ordinary citizens; indeed, they should be held to strict accountability.

To uphold criminal acts of either state or federal police officers who violate an explicit federal statute, by permitting a citizen kidnaped by them to be brought to trial and punishment in a jurisdiction to which he has been forcibly brought without warrant of law, would in practical effect lend encouragement to the commission of criminal acts by those sworn to enforce the law. Obviously fear of criminal pun-

ishment has been an insufficient deterrent on the police officers involved in this case, if the averments of the petition be accepted as true. The petitioner is entitled to a hearing upon these allegations.[1]

[fol. 30] Accordingly, the cause will be remanded to the United States District Court for hearing upon the merits of the petition, with full opportunity to be afforded the petitioner to adduce evidence in support of the fact averments of his petition. Let the factual issues involved be determined by the district judge, and appropriate findings be filed by him.

DISSENTING OPINION

MILLER, Circuit Judge, dissenting. I am of the opinion that the judgment of the District Court dismissing the application should be affirmed upon the following grounds:

It does not appear "that the applicant has exhausted the remedies available in the courts of the State," which under

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[1] In our view, we are privileged under the Supreme Court opinion in *Darr* v. *Burford*, 339 U. S. 200, to hold as we do that previous denial of petition for certiorari to the Supreme Court as a condition precedent to an application for a writ of *habeas corpus* addressed to the district court is unnecessary *in this case*, because of such "exceptional circumstances" found to exist here as to require prompt federal intervention. It appears that certain United States District Judges in the same district are upholding the action of state officers in forcibly abducting and kidnaping from other states and bringing, without warrant of law or extradition, persons charged with crime into the State of Michigan for trial. See *Hatfield* v. *Warden*, 88 F. Supp. 690, 691 (E. D. Mich.); *Ex parte Brown*, 90 F. Supp. 50 (E. D. Mich.). Moreover, the district judge in the instant case has ignored our decision in *Brown* v. *Frisbie*, 178 F. (2d) 271 (C. A. 6).

We think, therefore, that the course of this case should not be arrested on technical procedural grounds, but should be expedited by petition for certiorari to the Supreme Court for prompt review of our decision, if the highest tribunal deems it advisable to grant such petition. This would be the most expeditious route for final solution of what would seem to be an urgently practical problem in the administration of justice in certain criminal cases.

§ 2254, Title 28, U. S. Code is a necessary condition precedent to the granting of the application in this proceeding. *Darr* v. *Burford*, 339 U. S. 200; *Ex parte Hawk*, 321 U. S. 114. The statement of the Court in *Darr* v. *Burford*, *supra*, at p. 219, that "Nothing has been pleaded or proved to show that here exceptional circumstances exist to require prompt federal intervention" is equally applicable to this case. The petition complains of illegal confinement since February 21, 1942. The present action was not filed until March 14, 1950. The petition contains no allegation explaining the delay, makes no showing of "exceptional circumstances of peculiar urgency" (*Ex parte Hawk*, *supra*, at p. 117), and does not explain why the regular and orderly procedure in the State Court should not be followed before asking for federal intervention.

The application, coming after the trial and sentence in the state court proceedings, comes too late. The point now raised was available as a defense in the state court trial, but was not there raised or relied upon by appellant. It can not now be raised in a collateral proceeding in a federal court in a later attack on the state court judgment. *United States* v. *Brady*, 133 F. (2d) 476, 481, C. A. 4th, cert. denied, 319 U. S. 746, rehearing denied 319 U. S. 784; *Parker* v. *United States*, 184 F. (2d) 488, C. A. 4th; *Ex parte Spencer*, 228 U. S. 652, 660-661; *Friedberg* v. *United States*, 69 F. (2d) 170, C. A. 5th. See also *Robinson* v. *United States*, 144 F. (2d) 392, 396, C. A. 6th; *Woolsey* v. *Best*, 299 U. S. 1. Even if not treated as waived, it has not as yet been presented in any State Court proceeding available to the applicant. We can not assume that it would not receive as full consideration in such a State Court proceeding [fol. 31] as it would receive here, or that the applicant would not obtain full and prompt relief in such proceeding, if he is entitled to it.

This view of the case makes it unnecessary to consider the question discussed in the majority opinion, upon which I express no opinion. Nor does it in any way affect what rights, if any, the appellant may have against the arresting officers.

[fol. 32] IN THE UNITED STATES COURT OF APPEALS, 6TH CIRCUIT

[Title omitted]

PETITION FOR REHEARING AND OTHER RELIEF—Filed June 15, 1951

To the Honorable the United States
Court of Appeals—Sixth Circuit:

The Solicitor General of the State of Michigan respectfully petitions the Court to grant a rehearing in this cause, or, in the alternative, remand the record to the court below without prejudice to consideration by the District Judge of the matters and things hereinafter set forth as grounds for this application:

[fol. 33] First:

Although the State of Michigan affords an adequate remedy by way of corrective process for those who would on Federal constitutional grounds challenge the validity of a conviction and sentence of imprisonment as punishment for crime, the petitioner in this cause has never, in any court of the State, availed himself thereof, and hence has not exhausted his State remedies.

Second:

More specifically, the Solicitor General avers as follows:

1. The petitioner, Shirley, alias Floyd Collins, has never by motion for new trial or otherwise in the circuit court for the county of Genesee, Michigan, wherein on the 29th day of April, 1942, being then and there represented by competent counsel, he was duly convicted by a jury of first degree murder, raised the question of jurisdiction asserted in his pending petition for writ of habeas corpus, viz., that said court lacked jurisdiction to try him for murder committed in Genesee county, Michigan, because he had been illegally kidnapped by Michigan police officers in the state of Illinois and forcibly transported, against his will, and without a warrant of rendition in extradition proceedings, to the county of Genesee, state of Michigan, contrary to the Lindbergh Law of the United States.

2. Although the petitioner Collins has on several occasions applied to the Supreme Court of the State of Michigan for writs of mandamus, for leave to appeal, and for a writ of habeas corpus, he has never sought such relief on the ground first asserted in the District Court, viz., that the trial court lacked jurisdiction to try him for the criminal offense of murder, by virtue of the alleged fact that he had [fol. 34] been kidnapped by Michigan police officers and unlawfully transported in interstate commerce contrary to Federal law.

3. The Solicitor General has made a careful examination of the files and records of the Supreme Court of the State of Michigan in the following proceedings instituted in that Court by the petitioner, Floyd Collins or Shirley Collins, viz.,

Cal. No. 43748½, Mandamus proceedings brought by Collins on the 19th day of February 1947, to compel the trial judge to decide pending motions for new trial, and denied by the Supreme Court April 11, 1947.

Cal. No. 43822½, Mandamus proceedings brought by Collins on the 30th day of April 1947, to compel said trial judge to take action on a pending supplemental motion to reconsider the foregoing, and denied by the Supreme Court June 11, 1947; in this matter an application for rehearing was denied by the Supreme Court Oct. 13, 1947.

Cal. No. 44449½, Application for leave to appeal filed by Collins on or about the 13th day of December 1948, and denied by the Supreme Court on the 13th day of April 1949. This application sought review of the conviction and sentence of Collins, following trial by jury while represented by counsel, and of orders denying leave to file delayed motions for new trial.

Cal. No. 44524½, Petition for writ of habeas corpus, filed by Collins June 4, 1949, and denied by the Supreme Court June 22, 1949.

4. Such examination of the files and record aforesaid in the Supreme Court of the State of Michigan, reveals that [fol. 35] in the several proceedings listed above, the petitioner herein, Floyd or Shirley Collins, failed to raise the question now before this Honorable Court, based upon his claim that he was kidnapped across state lines. And such

examination further discloses that in such proceedings, and in the court of trial, Collins raised the following major points of law and of fact:

(a) that the opening statement of the prosecuting attorney, made to the jury during petitioner's trial for murder, was prejudicial and not based on facts;

(b) defendant's (petitioner here) common-law wife was allowed to testify against him;

(c) the verdict of the jury was contrary to law and against the weight of the evidence;

(d) the evidence was insufficient to establish that petitioner had committed the offense of murder in the first degree;

(e) the prosecuting attorney failed to endorse on the information the names of certain material witnesses;

(f) there was error in the charge;

(g) the petitioner did not have a fair trial;

(h) he was not accorded an oral hearing on his motions for new trial;

(i) he was tried upon an information filed by the prosecuting attorney rather than upon indictment by a grand jury;

(j) the trial court erred in the admission of testimony; and

(k) he was arrested, tried and convicted upon a defective complaint and warrant, inasmuch as said com-
[fol. 36] plaint was signed by a police officer and not by an eye-witness.

Wherefore, the Solicitor General, on behalf of the Attorney General of the State of Michigan, as well as the respondent warden, most respectfully prays as follows:

I. If the Court deem such an order necessary, that the time to apply for a rehearing herein be extended a reasonable length of time to enable the Solicitor General to obtain and file with the clerk of this Court exemplified copies of the records of the trial court and of the Supreme Court of the State of Michigan (which files and records are extremely voluminous).

II. That a rehearing be granted.

III. In the alternative, that the order remanding the cause to the court below, provide that the District Judge, in carrying out the mandate of this Court be permitted to

consider the question whether the petitioner for habeas corpus has exhausted his state remedies.

Attached hereto, in support of the foregoing petition, is a certificate of the clerk of the Supreme Court of the State of Michigan, together with certified copies of the several orders above referred to.

(S.) Edmund E. Shepherd
Solicitor General of the
State of Michigan
Counsel for Appellee

[fol. 37] Supporting Certificate

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that I have carefully examined the files and records of said Court for the purpose of ascertaining what if any proceedings have been instituted therein by one Floyd Collins, alias Shirley Collins, since the 8th day of May 1942, to obtain a review or other relief touching his conviction in the circuit court for the county of Genesee, State of Michigan, and that the several proceedings scheduled in the foregoing application, constitute all of the proceedings brought by Floyd or Shirley Collins during that period of time.

(S.) Jay Mertz,
Clerk of the Supreme Court of
the State of Michigan

Certificate of Counsel

Edmund E. Shepherd, Solicitor General of the State of Michigan, counsel for appellee, hereby certifies that in his judgment the foregoing petition for rehearing is well founded and is not interposed for delay.

(S.) Edmund E. Shepherd
Solicitor General of the
State of Michigan

[fol. 38] (Certified Copies of Orders of the Supreme Court of the State of Michigan, attached as exhibits hereto.)

At a session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in

the City of Lansing, on the eleventh day of April, in the year of our Lord one thousand nine hundred and forty-seven.

Present the Honorable Leland W. Carr, *Chief Justice.* Henry M. Butzel, George E. Bushnell, Edward M. Sharpe, Emerson R. Boyles, Neil E. Reid, Walter H. North, John R. Dethmers, *Associate Justices.*

43748½

FLOYD COLLINS, Plaintiff,

vs.

PAUL V. GADOLA, Genesee Circuit Judge, Defendant

In this cause a petition is filed by plaintiff for the allowance of an order to show cause, and a brief in opposition thereto having been filed by defendant, and due consideration thereof having been had by the Court, It is ordered that the petition be and the same is hereby denied.

[fol. 39] STATE OF MICHIGAN, ss.

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 11th day of June, in the year of our Lord one thousand nine hundred and fifty-one.

Jay Mertz, Clerk.

At a session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the eleventh day of June, in the year of our Lord one thousand nine hundred and forty-seven.

Present the Honorable Leland W. Carr, *Chief Justice.* Henry M. Butzel, George E. Bushnell, Edward M. Sharpe,

Emerson R. Boyles, Neil E. Reid, Walter H. North, John R. Dethmers, *Associate Justices.*

[fol. 40] 43822½

FLOYD COLLINS, Plaintiff,

vs.

PAUL V. GADOLA, Genesee Circuit Judge, Defendant

In this matter a petition is filed for the allowance of an order to show cause, and a brief in opposition thereto having been filed, and due consideration thereof having been had by the Court, It is ordered that the petition be and the same is hereby denied for the reason that application for a new trial was denied on February 25, 1947, and review can only be had by application for leaves to appeal therefrom. The People are directed to serve petitioner with copy of opinion and order on new trial proceedings and file proof of service herein.

STATE OF MICHIGAN—SS.

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 11th day of June, in the year of our Lord one thousand nine hundred and fifty-one.

Jay Mertz, Clerk.

[fol. 41] At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the thirteenth day of April, in the year of our Lord one thousand nine hundred and forty-nine.

Present the Honorable Edward M. Sharpe, *Chief Justice.* George E. Bushnell, Emerson R. Boyles, Neil E. Reid, Walter H. North, John R. Dethmers, Henry M. Butzel, Leland W. Carr, *Associate Justices:*

44449½

THE PEOPLE OF THE STATE OF MICHIGAN, Plaintiff,

vs.

SHIRLEY COLLINS, Defendant

In this cause an application is filed by defendant for leave to appeal from the sentence of the Circuit Court for the County of Genesee, and a brief in opposition thereto having been filed by plaintiff, and due consideration thereof having been had by the Court, It is ordered that the application be and the same is hereby denied.

[fol. 42] STATE OF MICHIGAN—ss.

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 11th day of June, in the year of our Lord one thousand nine hundred and fifty-one.

Jay Mertz, Clerk.

At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the twenty-second day of June, in the year of our Lord one thousand nine hundred and forty-nine.

Present the Honorable Edward M. Sharpe, *Chief Justice*. George E. Bushnell, Emerson R. Boyles, Neil R. Reid, Walter H. North, John R. Dethmers, Henry M. Butzel, Leland W. Carr, *Associate Justices*.

[fol. 43]

44524½

In the Matter of SHIRLEY COLLINS

Petition for writ of habeas corpus is denied. Defendant's application for leave to appeal was denied by this

Court on April 13, 1949. The complaint in this case substantially complied with the statute. See Gillespie's Criminal Law and Procedure, Vol. 1, sec. 131-2. Under the law of Michigan the complaint need not be in writing. People v. Clark, 33 Mich. 112; Turner v. People, 33 Mich. 363; People v. Hare, 57 Mich. 505; and cases referred to in footnotes. But even if there had been any error or insufficiency in the magistrate's examination or even as claimed, a lack of showing of probable cause, respondent made no objection upon being bound over or at the trial. See People v. Dowd, 44 Mich. 488, which case has been followed frequently in this Court as late as People v. Bonneau, 323 Mich. 237. The case is also ruled by In re Krusiewicz, 263 Mich. 74-76, and In re Reno, 321 Mich. 497, and cases there cited.

Under the facts above, the writ of habeas corpus and ancillary certiorari are denied.

STATE OF MICHIGAN—ss.

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

[fol. 44] In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 11th day of June, in the year of our Lord one thousand nine hundred and fifty-one.

Jay Mertz, Clerk.

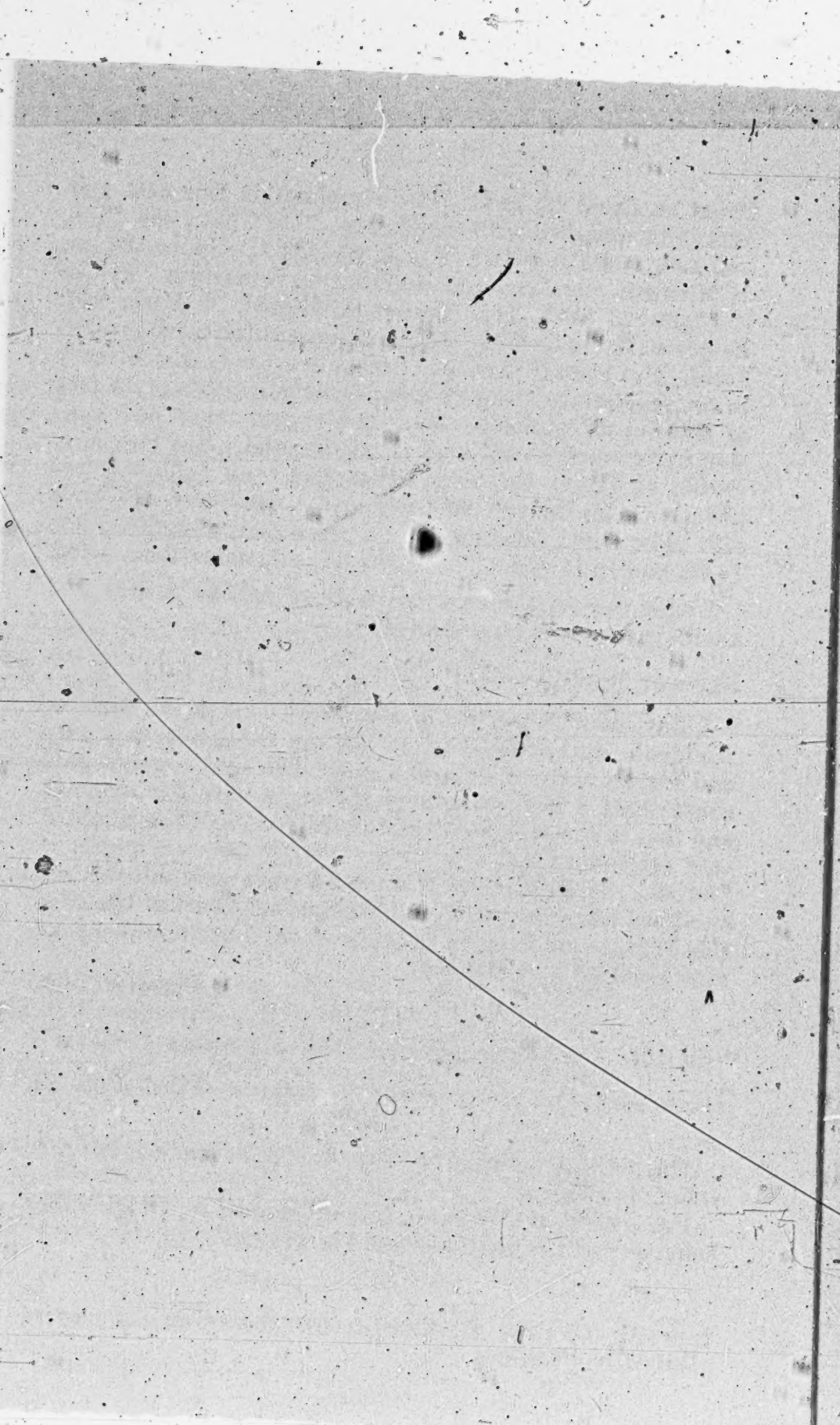
[fol. 45] IN UNITED STATES COURT OF APPEALS

ORDER DENYING PETITION FOR REHEARING—Filed June 25, 1951

The petition on behalf of appellee for rehearing, or other relief, is denied.

For reasons stated in his dissenting opinion, Judge Miller believes that the petition should be granted.

[fol. 46] Clerk's Certificate to foregoing transcript omitted in printing.



[fol. 47] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 331

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed November 5, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.